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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,819	09/17/2003	Andrzej Strak	TRSE121566	3439
26389	7590	02/14/2006	EXAMINER	
CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC 1420 FIFTH AVENUE SUITE 2800 SEATTLE, WA 98101-2347			PADEN, CAROLYN A	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 02/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/664,819

**Applicant(s)**

STRAK ET AL.

**Examiner**

Carolyn A. Paden

**Art Unit**

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2-9-04</u> . | 6) <input type="checkbox"/> Other: _____  |

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 5, 11, 16-18, 24-26 and 29-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Shenouda (4,396,634) and see the example, column 2, lines 23-50 & column 3, lines 23-24.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 3, 6, 7, 12-13, 19-23 & 27-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shenouda.

Shenouda discloses a shrimp analog made by extracting fish with a salt solution to extract the myofibrillar proteins. Then the extracted proteins were centrifuged to dewater the fish protein. The fish protein was mixed with salt and sodium triphosphate to create a mixture of a certain ionic strength. Then the protein was mixed with a number of food additives

including a food binder, such as egg white protein, to form a fish paste.

The fish paste was set into blocks by heat treatment at 100 C for 3 minutes.

The claims appear to differ from Shenouda in the recitation of the time and temperature of treatment that is set forth in the dependent claims. No unobvious or unexpected result is seen from the variation of treatment times and temperatures set forth in the claims since they are all expected to modify the surface of the fish.

Claims 1, 4, 5, 7, 10, 12-16, 24, 25 & 28-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Kelly (3,897,573) and see column 2, lines 1-19 & 32-38 as well as column 1, lines 65-67.

Claims 2, 3, 6, 8, 9, 11 & 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly (3,897,573).

Kelly discloses a fish product, such as salmon or trout, that is made by treating fish fillets with salt and a phosphate compound, coating the fish with fish binder, molding the binder coated fish and freezing it (column 2, lines 1-19, 32-38 & 62-63 and column 1, lines 65-67). The claims appear to differ from Kelly in the recitation of the treatment time and temperature but no unobvious or unexpected difference or result is seen from the conditions of the claims and the treatment process of Kelly. It is

appreciated that surimi is not mentioned but no unobvious or unexpected difference is seen from the fish source of Kelly and those used in the claims.

Claims 1, 2, 4, 5, 7, 8, 14, 16-18 & 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Hanson (4,579,741) and see example 2.

No claim is allowed.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art of record is cited to show the use of phosphate in seafood and also shows using binders in seafood.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CAROLYN PADEN 2-9-06  
PRIMARY EXAMINER 1761